

LIBRARY  
SUPREME COURT, U. S.

Office - Supreme Court, U. S.  
**FILED**  
FEB 3 1950

CHARLES ELMORE CROPLEY

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1949

No. 438

ORDER OF RAILWAY CONDUCTORS OF AMERICA, an  
unincorporated association, *Petitioner*,

v.

SOUTHERN RAILWAY COMPANY, a corporation organized and  
existing under the laws of the State of Virginia.

On Writ of Certiorari to the Supreme Court of the State of  
South Carolina.

**REPLY OF RESPONDENT TO MOTION OF RAILWAY  
LABOR EXECUTIVES' ASSOCIATION FOR LEAVE  
TO FILE A BRIEF AMICUS CURIAE.**

NATH B. BARNWELL  
FRANK G. TOMPKINS,  
HENRY L. WALKER,  
W. S. MACGILL,

*Attorneys for Respondent.*

SIDNEY S. ALDERMAN,  
*Of Counsel.*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1949

---

No. 438

---

ORDER OF RAILWAY CONDUCTORS OF AMERICA, an  
unincorporated association, *Petitioner*,

v.

SOUTHERN RAILWAY COMPANY, a corporation organized and  
existing under the laws of the State of Virginia.

---

On Writ of Certiorari to the Supreme Court of the State of  
South Carolina.

---

**REPLY OF RESPONDENT TO MOTION OF RAILWAY  
LABOR EXECUTIVES' ASSOCIATION FOR LEAVE  
TO FILE A BRIEF AMICUS CURIAE.**

---

Now comes the respondent Southern Railway Company,  
and prays the Court to deny the petition of the Railway  
Labor Executives' Association for leave to file a brief  
*amicus curiae* for the following reasons:

1. The petitioner, Order of Railway Conductors of  
America, as stated in the motion is affiliated with the

Railway Labor Executives' Association so that there is no need for the movant to file a brief to protect the interests of its members.

2. The motion fails to state any facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties as required by Rule 27(9)(b).

3. To grant the motion will in effect be permitting petitioner to file two main briefs without showing any need for such duplication as an aid to the Court.

### **1. Movant's Interests Are Already Adequately Represented.**

The Railway Labor Executives' Association says that it is an unincorporated association of 21 affiliated labor organizations, one of which is the petitioner Order of Railway Conductors of America.

The petitioner has vigorously defended this case from its inception, having been represented by able counsel not only of the South Carolina bar but also by associate counsel from Cedar Rapids, Iowa, who are also members of the bar of this Court. The very issues in which the movant asserts its interest have been fully litigated in the lower courts and were argued twice before the court below after full and lengthy briefs were filed. There is no reason to believe that this Court needs assistance from an *amicus curiae* to be sure that all proper issues now before it will be presented properly. The petitioner has already filed a full and complete brief covering the law and the facts. As the petitioner is a member of the movant organization, its counsel are and have been in a position to receive the suggestions of the organizations affiliated with the Railway Labor Executives' Association, and to present them adequately to this Court both by written brief and oral argument.

## **2. The Motion Fails to Meet the Requirements of Rule 27.**

Par. 9(b) of Rule 27 requires that a motion for leave to file a brief *amicus curiae* shall "set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties" which will be covered in the proposed brief.

After stating movant's interest, which is identical with that of petitioner, the motion merely states the issue in substantially the same language set forth in petitioner's brief now on file in this Court, and then confesses that the contentions of respondent will be "capably and strenuously opposed by counsel for the petitioner."

The motion nowhere points to facts or questions of law that it intends to discuss as *amicus curiae*. It must be concluded that it simply proposes to discuss again the very points already covered by the briefs of the parties.

## **3. To Grant the Motion Would in Effect Be Permitting Petitioner to File a Second Main Brief.**

The petitioner now has on file its brief covering the issues before the Court in this case. All of the matters referred to in the motion of Railway Labor Executives' Association are discussed and argued in the light of the facts of this case and the general interest of the railroad industry, the employees and their union representatives.

We have pointed out that the petitioner is a member of the movant organization, and hence movant is not in the position of a stander-by who seeks to assist the Court by discussing facts or issues not adequately dealt with by the parties before the Court, which is the proper function of an *amicus*. On the contrary, it really seeks the rights of a party to file a main brief so that petitioner can have the benefit of arguing its cause by brief twice. The motion shows on its face that movant's desire to file a brief is not based on a desire to help the Court, but is because:

"It is felt that the interests of the Association and all its affiliated organizations are so directly concerned."

The petitioner had ample opportunity to intervene in this case while it was pending in the courts below, and cannot now be heard to complain at not being given the rights of a party.

### Conclusion.

The respondent Southern Railway Company respectfully prays that this honorable Court, in its discretion, deny the motion of the Railway Labor Executives' Association the privilege of filing herein a brief *amicus curiae*.

Respectfully submitted,

---

NATH B. BARNWELL,  
FRANK G. TOMPKINS,  
HENRY L. WALKER,  
W. S. MACGILL,

*Attorneys for Respondent.*

SIDNEY S. ALDERMAN,  
*Of Counsel.*